IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 434

MARTIN L. SWEENEY, *Petitioner*,

v.

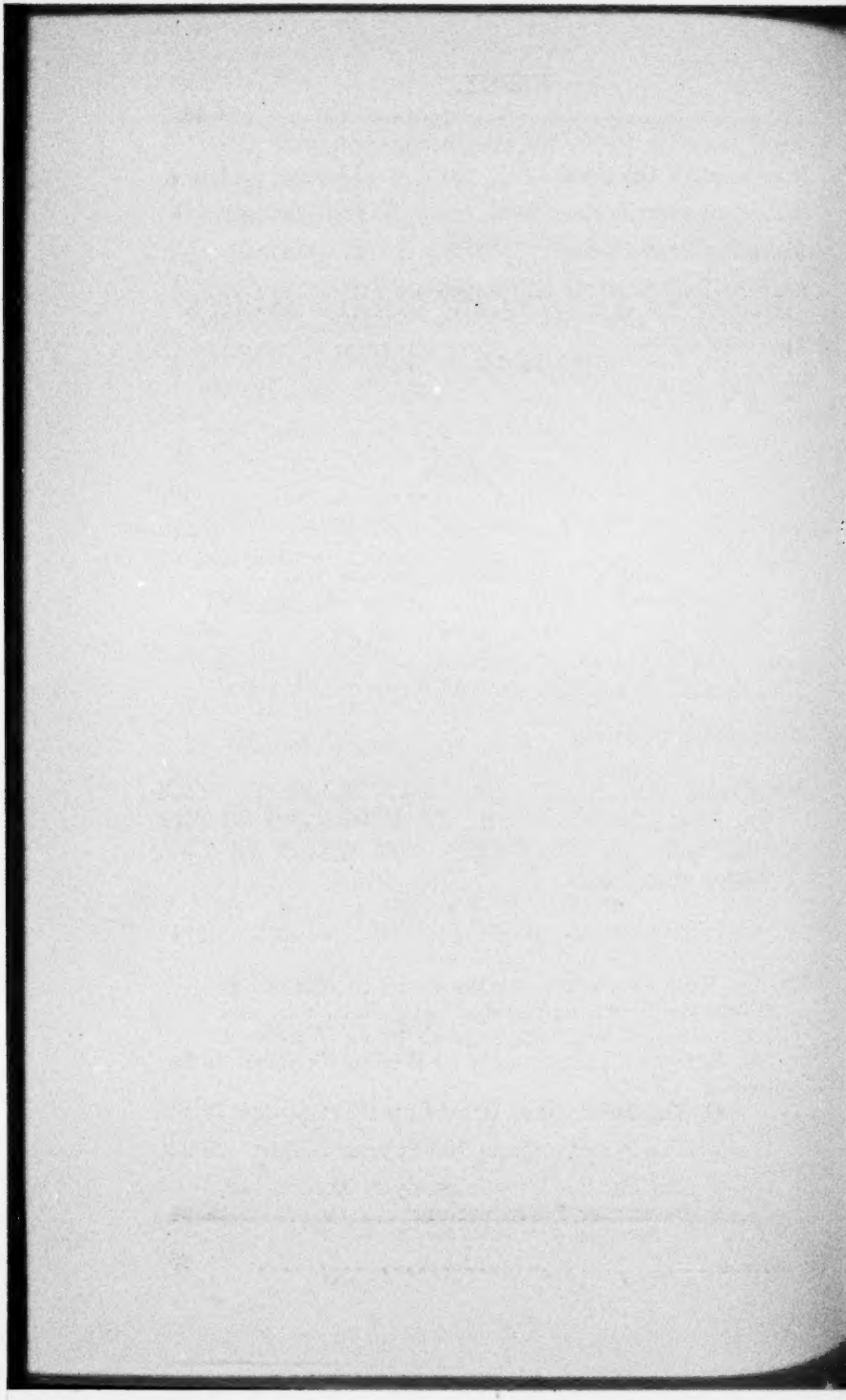
ELEANOR M. PATTERSON, Trading as the Washington Times-Herald, DREW PEARSON and ROBERT S. ALLEN.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

JOHN O'CONNOR,
Counsel for Petitioner.

WILLIAM F. CUSICK,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.



INDEX.

CITATIONS.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. .....

MARTIN L. SWEENEY, *Petitioner,*

v.

ELEANOR M. PATTERSON, Trading as the Washington Times-Herald, DREW PEARSON and ROBERT S. ALLEN.

PETITION.

To the Honorable, the Supreme Court of the United States:

Comes now Martin L. Sweeney, hereinafter styled petitioner, and, applying for writ of certiorari to the United States Court of Appeals for the District of Columbia, respectfully shows:

STATEMENT OF THE CASE.

The petitioner, Martin L. Sweeney, a duly elected member of the Congress of the United States, from the State of Ohio, filed this suit in the District Court of the United States for the District of Columbia (R. 2). The complaint alleged general damages in the sum of $250,000.00, arising out of the publication by respondents Pearson and Allen, in ap-

proximately three hundred and twenty-five newspapers throughout the United States and Territories, and by respondent Eleanor M. Patterson in the newspaper now known as the Times-Herald, having a large circulation throughout the District of Columbia and elsewhere, of the following false and defamatory article (R. 2-5):

(1) "A hot behind-the-scenes fight is raging in Democratic congressional ranks over the effort of Father Coughlin to prevent the appointment of a Jewish judge in Cleveland.

(2) "The proposed appointee is Emerich Burt Freed, U. S. District Attorney in Cleveland and former law partner of Senator Bulkley, who is on the verge of being elevated to the U. S. District Court.

(3) "This has aroused the violent opposition of Representative Martin L. Sweeney, Democrat of Cleveland, known as the chief congressional spokesman of Father Coughlin.

(4) "Basis of the Sweeney-Coughlin opposition is the fact that Freed is a Jew, and one not born in the United States. Born in Hungary in 1897, Freed was brought to the United States at the age of 13, was naturalized 10 years later.

(5) "Justice Department officials say he has made an excellent record as U. S. Attorney, is able, progressive, and was second on the list of judicial candidates submitted by the executive committee of the Cleveland Bar Association. First on the list was Carl Friebolin, whom Justice Department officials say they would have gladly appointed despite his age of 60, had he not eliminated himself voluntarily for physical reasons.

(6) "Two others on the Bar Association's list, Walter Kinder and Harry Brainard were eliminated because of big business or reactionary connections. Last on the list was Dan B. Cull, a former Common Pleas Court judge, and an excellent appointment except that he happens to be a Catholic and the last two judicial appointments in Ohio have been Catholics. So the Justice Department returned to the No. 2 man on the list, a Jew.

(7) "Irate, Representative Sweeney is endeavoring to call a caucus of Ohio Representatives December 28 to protest against Freed's appointment." (The numbering of the paragraphs is ours for convenience of reference).

By innuendo petitioner alleged that the publication meant and intended to convey that he was guilty of racial prejudice against people of Jewish origin and guilty of conduct unbecoming a public officer and all of which held him up to contempt in the eyes of constituents, and clients he represented in a professional capacity (R. 5).

In a bill of particulars petitioner specifically alleged that paragraph One (1) and the first sentence of paragraph four (4) were false in their reference to him; that paragraphs three (3) and seven (7) were false in their entirety; and, as to other matters in the article he had insufficient information to form a belief as to their truth or falsity (R. 5-6).

For answer to the complaint, respondents pleaded a qualified general denial; alleged that the defamatory article was true and fair comment on the acts of a public official; and, interposed a partial defense in mitigation of damages (R. 7-14). Appended to said answers were respondents' demand for a jury trial (R. 14).

Subsequently, respondents filed a motion for judgment on the pleadings, said motion being bottomed on the contention that the complaint did not state a claim against respondents upon which relief could be granted in that the publication complained of was not libelous *per se* and no special damages had been alleged (R. 15).

The trial court handed down no written opinion in the case, but by order dated April 11, 1941, granted respondents' motion for judgment on the pleadings (R. 16).

From the said order of the trial court, your petitioner appealed to the Court of Appeals for the District of Columbia and that court, in an opinion dated May 25, 1942, affirmed the lower court's action (R. 18-20). As will be hereinafter shown, in our brief in support hereof, the Court of Appeals summarily dismissed as not being in point, all

applicable precedents, and decided the issue upon the decision in but a single case and in which it had been held by the court that the complainant in libel "had patriotically sought to have eliminated from the public schools textbooks containing what he regarded as anti-patriotic or pro-communistic matter—a highly commendable effort on his part."* The manifest error of the Court of Appeals in making "a highly commendable effort" analogous to a false charge of anti-Semitism can be deemed no less than most extraordinary.

Moreover, the Court of Appeals for the District of Columbia completely ignored the findings of the Court of Appeals for the Second Circuit, recently affirmed by this Court, in a suit in which the article complained of was substantially the same as in the case at bar.**

A petition for a rehearing was duly filed, and was denied by the Court of Appeals on June 30, 1942 (R. 31).

STATEMENT AS TO JURISDICTION.

Jurisdiction is conferred upon the Supreme Court by Section 240(a) of the Judicial Code, as amended [28 U. S. C. A., Section 347(a)]. The decision of the Court of Appeals for the District of Columbia was handed down on May 25, 1942, and will be found at pages 18 to 20 of the Record. A petition for rehearing was denied on June 30, 1942 (R. 31).

---

* *Sullivan* v. *Meyer*, 67 App. D. C. 228, 229.

** *Sweeney* v. *Schenectady Union Pub. Co.*, 122 F. 2d 288, aff'd., by the Sup. Ct. —— U. S. ——, 86 L. Ed. 867, rehearing denied, —— U. S. ——, 86 L. Ed. 1023.

QUESTIONS PRESENTED.

I.

The article complained of by petitioner is libelous *per se*, and special damages are not required to be pleaded or proved.

II.

The right of every citizen, whether he be a public official or not, to a decent reputation when he has done nothing to cause it to be otherwise, is a property right, protected by the Constitution and for an unjust invasion of which he is entitled to compensation.

III.

If the meaning of the publication is doubtful—one meaning being libelous, the other non-libelous—the question is one for the jury to decide.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

I.

The opinion of the Court of Appeals for the District of Columbia is contrary to all applicable local decisions and is in conflict with decisions of this Court and with a recent decision by the Court of Appeals for the Second Circuit as affirmed by this Court.

II.

The enactment of a rule of liability demanding a showing of *gross* immorality or *gross* incompetence with respect to libels on public officials, in the absence of any expression as to what constitutes such excessive immorality or incompetence, is contrary to all sound public policy.

III.

The decision licensing false and vicious attacks on public officials and coming from a jurisdiction within the seat of the

nation's legislative functions, will have grave consequences and far reaching effects and should not be allowed to stand unchallenged without a review by this Court of so radical a departure from the settled law.

WHEREFORE, petitioner prays that a writ of certiorari issue to the United States Court of Appeals for the District of Columbia, commanding it to certify to the Supreme Court, for its review and determination on a day certain, a full and complete transcript of the record and proceedings in cause numbered and entitled on the docket, No. 7932, Martin L. Sweeney 1. Eleanor M. Patterson, Trading as the Washington Times-Herald, Drew Pearson and Robert S. Allen, and that the judgment of the Court of Appeals and the District Court be reversed; and that petitioner have such other and further relief in the premsies as this Court may deem proper.

Respectfully submitted,

JOHN O'CONNOR,
Counsel for Petitioner.

WILLIAM F. CUSICK,
Of Counsel.